



## **BOARD MEETING MINUTES**

**FEBRUARY 20, 2009**

**SAN DIEGO, CALIFORNIA**

### **BOARD MEMBERS**

#### **PRESENT:**

John Vertido, L.V.N. Educator Member, President  
Todd D'Braunstein, P.T. Member, Vice President  
Kevin Baucom, P.T. Member  
Martin Mariscal, Public Member  
Kenneth Merchant, Public Member  
Angelique Stephens, Public Member

### **BOARD MEMBERS**

#### **ABSENT:**

Josefina Canchola, Public Member

### **STAFF PRESENT:**

Teresa Bello-Jones, J.D., M.S.N., R.N., Executive Officer  
Ann Shuman, Supervising Nursing Education Consultant  
Angelina Martin, Enforcement Division Chief  
Sophia Cornejo, Administrative Analyst  
Jason Reinhardt, Administrative Secretary  
Laura Freedman Eidson, Legal Counsel, Department of  
Consumer Affairs

## **1. CALL TO ORDER**

The meeting was called to order by John Vertido, at 9:08 a.m., February 20, 2009, at the Four Points by Sheraton San Diego, Pavilion, 8110 Aero Drive, San Diego, CA 92123.

Mr. Vertido announced that on February 19, 2009, the Interim Board Members unanimously reappointed Teresa Bello-Jones as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians (Board). Mr. Vertido, Interim Board Member, administered the Executive Officer's (EO) Oath of Office.

## **2. INTRODUCTION OF BOARD MEMBERS AND STAFF**

The Interim Board Members introduced themselves. Ms. Bello-Jones, EO, introduced the staff present.

### **3. ELECTION OF BOARD OFFICERS**

The EO, called for the election of the Board President.

**M – Kenneth Merchant; S – Angelique Stephens; and carried unanimously to elect John Vertido as Board President.**

Mr. Vertido called for the election of the Board Vice-President.

**M – Martin Mariscal; S – Angelique Stephens; and carried unanimously to elect Todd D’Braunstein as Board Vice-President.**

Mr. Vertido thanked the Board for electing him as President.

Todd D’Braunstein thanked the Board for electing him as Vice-President.

### **4. INTRODUCTION OF ACCREDITED SCHOOLS REPRESENTED AT MEETING**

American College of Nursing, Concord  
Annenburg School of Nursing, Reseda  
California Nurses Education Institute,  
Cathedral City  
Casa Loma College, Van Nuys  
Coast Health Career College,  
Anaheim  
College of Nursing & Technology,  
Reseda  
Concorde Career, Garden Grove  
Concorde Career, San Bernardino  
Concorde Career, San Diego  
Concorde Career, West Los Angeles  
Four D College, Colton  
Four D College, Victorville

Healthcare College of California, Stockton  
Healthcare Education Advancement Center,  
Montrose  
Kaplan College, North City (Vista)  
Kaplan College, North Hollywood  
Kaplan College, Sacramento  
Kaplan College, San Diego  
Kaplan College, Stockton  
Mt. San Jacinto College, Menifee  
North West College, West Covina  
Pacific College, Costa Mesa  
St. Francis Career College, Lynwood  
Westech College School of Technology,  
Ontario

### **5. BOARD PRESIDENT’S MESSAGE**

Mr. Vertido, Board President, read a special notice addressing the Board’s legal mandate and procedure to have an issue placed on the Board Meeting agenda. He announced that public comment is welcome on any open agenda item prior to the Board’s discussion. However, the Board may limit the length of time allowed for comment.

The Board President announced that a list of disciplinary actions taken against licensees and applicants is published and distributed to all interested parties on June 30<sup>th</sup> and December 31<sup>st</sup> each year. Interested parties were advised to contact Board staff or submit a request in writing to the Board to obtain a copy of this list.

## **6. EXECUTIVE OFFICER'S REPORT**

### **Education Program Update**

The EO reported that the Board currently has 212 accredited and approved Vocational Nursing (VN) Programs and 16 accredited and approved Psychiatric Technician (PT) programs.

Due to the present shortage of consultant staff and the imposition of two furlough days per month that began February 6, 2009, for most state employees (including Board staff), new program proposals may take twelve (12) months or longer for review, depending on the quality and completeness of the proposal.

### **Examination Update**

The average annual pass rate for California first-time VN candidates was 73%, while the overall pass rate for VN candidates was 55%. The average annual pass rate for first-time PT candidates was 69%, while the overall pass rate for PT candidates was 51%.

### **Liaison Activities**

- On January 20, 2009, the EO was keynote speaker at the SCI Career College Vocational Nursing Graduation and Pinning Ceremony.
- On January 20-22, 2009, Cheryl Anderson, Nursing Education Consultant, attended the National Council of State Boards of Nursing (NCSBN) Examination Committee Meeting in Chicago, IL.
- On January 26-27, 2009, the EO attended the NCSBN Continued Competence Committee Meeting in Chicago, IL.

### **Department of Consumer Affairs (DCA) Update**

- The Governor released the Fiscal Year 2009-10 Budget on January 9, 2009, which is posted on the Department of Finance website.

DCA has 24 budget change proposals (BCPs) in the Governor's Budget, including the proposal for the additional costs of implementing retroactive fingerprinting requirements for existing licensees of the healing arts boards to conduct criminal background checks.

- The Governor's Executive Order S-16-08 ordered a mandatory two-day furlough each month for applicable state employees. Accordingly, beginning February 6, 2009, offices are closed the first and third Fridays of each month through June 2010.

### **Fingerprinting and Fees Regulations**

On January 9, 2009, the Office of Administrative Law (OAL) approved emergency regulations to implement retroactive fingerprinting and a fee increase to obtain the necessary staff and funding for this action.

### **Customer Service Surveys**

The EO announced that the Board is distributing “Customer Service Surveys” to solicit feedback regarding how it is accomplishing its mission and goals. The information is used to develop the Board’s Strategic Plan and included in the Board’s Sunset Review Reports.

## **7. CONSENT CALENDAR ITEM**

A. Adoption of November 21, 2008, Advisory Committee Meeting Minutes.

**M – Kenneth Merchant; and S – Martin Mariscal; and carried unanimously to adopt the Advisory Committee Meeting Minutes.**

## **8. REPORT OF DECISIONS REGARDING SCHOOL PROGRAM APPROVALS AND AUTHORIZATIONS**

The EO reported on decisions for VN and PT Programs.

## **9. PRESENTATION OF 2008 ANNUAL REPORT**

The EO presented the 2008 Annual Report.

## **10. PRESENTATION OF 2009 BOARD GOALS**

The EO presented the 2009 Board Goals.

### **Recommendation:**

The Board adopt the 2009 Board Goals.

**M – Todd D’Braunstein; and S – Kevin Baucom; and carried unanimously to adopt the 2009 Board Goals.**

## **11.REGULATORY REPORT**

### **11.A. REPORT ON EMERGENCY REGULATIONS REGARDING RETROACTIVE FINGERPRINTING, CRIMINAL HISTORY INQUIRIES, AND FEE INCREASE**

Sophia Cornejo, Administrative Analyst, reported that on November 4, 2008, Carrie Lopez, Director of the DCA, directed all boards/bureaus to implement retroactive fingerprinting of its licensees. Accordingly, emergency regulations were filed on December 30, 2008, to implement retroactive fingerprinting and a fee increase to obtain the staff and funding needed for this action. On January 9, 2009, the Office of Administrative Law (OAL) approved the emergency regulations.

### **11.B. CONFORMING REGULATIONS REGARDING RETROACTIVE FINGERPRINTING, RESPONSE TO BOARD INQUIRIES, AND FEE INCREASE**

Sophia Cornejo, Administrative Analyst, reported that, pursuant to the OAL's emergency regulation procedures, the Board is required to prepare a certificate of compliance to make the emergency fingerprinting regulations permanent. Therefore, the Board must file the regulations through the regular rulemaking process, including a 45-day notice and comment period.

Ms. Cornejo also stated that the language in the emergency regulations was modified to expand on the scope of the Board inquiries and make clarifying changes to the fingerprint and disclosure requirements.

#### **Recommendation:**

Direct staff to proceed with the rulemaking process to propose permanent regulations regarding responding to board inquiries, fingerprinting and disclosing requirements and implementing fee changes.

#### **Public Comment:**

Vickie Bermudez, representing the California Nurses Association (CNA), indicated that it was CNA association sent the comments to the BRN. She stated that CNA was also requesting the term "vehicle" and the "\$300" threshold be removed from the proposed language.

#### **Discussion:**

Mr. Mariscal expressed his concern for over-reporting, which will then cause more workload for Board staff. He was also concerned that it would be confusing for LVNs or PTs about what to report.

Angelina Martin stated that the Enforcement Division staff reviews the underlying facts because they often find acts that warrant discipline that will not be reflected by the conviction itself. While there might be slight increase in the workload, the fact that the

Board is told about an infraction doesn't necessarily mean that staff will spend a lot of time or even open an investigation on it.

Ms. Martin further stated that the \$300 threshold had been recommended by DCA to all agencies.

Ms. Freedman Eidson stated her understanding that the language was drafted and suggested by DCA to be as inclusive in reporting as possible because there is no requirement that staff take discipline on information reported.

Mr. Mariscal motioned to remove "traffic" and "\$300.00" from Sections 2517.5 (VN Regulations) and 2575.5 (PT Regulations) of the proposed language.

**M – Martin Mariscal; and S – Angelique Stephens; and failed 3-3 to adopt the language as modified by Martin Mariscal.**

**Discussion:**

The Board had additional discussion about the proposal and the effect of the changes. The Board President asked for a motion to re-consider the original recommendation.

Kenneth Merchant moved to re-examine Martin Mariscal's previous motion. The motion to reconsider carried unanimously.

**M – Kenneth Merchant; and S – Martin Mariscal; and passed unanimously to remove "traffic" and "\$300.00 from Sections 2517.5 (VN Regulations) and 2575.5 (PT Regulations) in the proposed language.**

## **12. LEGISLATIVE REPORT**

### **12.A. GOVERNOR'S PROPOSAL TO CONSOLIDATE BOARDS**

The EO presented the report regarding the governor's proposal to consolidate the VN program with the Board of Registered Nursing (BRN) to create the new Board of Registered and Vocational Nurses and to consolidate the PT program with the Board of Behavioral Sciences and the Board of Psychology to create the new Board of Mental Health.

**Recommendation:**

The Board considers a position regarding the governor's proposal to consolidate the Boards.

**Public Comment:**

Vicki Bermudez, Regulatory Policy Specialist for the California Nurses Association, stated that the Board should oppose the governor's proposal to consolidate the Board. Ms. Bermudez stated that Trailer Bill language is unacceptable and that this proposal has no place as part of a budget package. It should be a part of the sunset review

process rather than a bill that goes through the Little Hoover Commission (LHC), especially because the LHC does not have the authority to modify the proposal.

Laura Smith-McKenna, Director, American College of Nursing, Concord, stated that she is concerned this will cause the eventual disappearance of PTs. She is also concerned that this will cause several scope of practice issues.

Katherine Herd, former director of a proposed program, stated that the VN role will be diminished if the Boards are merged. In her opinion, VNs could eventually disappear. She considers it the responsibility of the Board to take a strong position regarding this matter.

#### **Discussion:**

Kevin Baucom stated that he is against this proposal. As a licensed PT, he feels that the educational gap between PTs, Marriage and Family Therapists, Licensed Clinical Social Workers, Licensed Educational Psychologists, Psychologists and Registered Psychological Assistants is too great.

The Board President stated that he is concerned that the VN and PT licenses will be diminished. The Boards would be weaker because the number of licensees represented could be overwhelming. This is not in the best interest of the public.

Angelique Stephens stated that it is the responsibility of the Board Members to ensure that the various license types are not diminished by merging the Boards. She stated that the Boards can still protect the public as well as the licensees if the Boards are merged.

Kenneth Merchant stated that the PT curriculum is too different from the curriculum of the other mental health professions. The PTs belong with a nursing board.

Mr. Mariscal stated that he would like to have the Board President write a letter to the governor stating the Board's concerns.

**M – Todd D'Braunstein; and S – Kevin Baucom; and carried 4-1 to take a position against the consolidation of the Boards. Martin Mariscal abstained from voting and Angelique Stephens voted no.**

#### **12.B. STATUTORY PROPOSAL TO AMEND BUSINESS AND PROFESSIONS CODE, SECTIONS 2895 (VN STATUTES) AND 4548 (PT STATUTES) RELATIVE TO STATUTORY FEE RANGES**

Ms. Martin, Enforcement Division Chief, reported that the Board is seeking an author to amend the Business and Professions Code, Sections 2895 and 4548, in order to increase the statutory maximum fee ranges for VNs and PTs.

**Recommendation:**

The Board approve the proposed statutory amendments relative to Business and Professions Code, Sections 2895 and 4548, and direct staff to proceed with the legislative process.

**M – Kenneth Merchant; and S – Angelique Stephens; and carried unanimously to adopt the recommendation.**

**12.C. LEGISLATIVE PROPOSALS REGARDING INTERIM PERMITS AND PERMISSIVE SITE VISITS**

Angelina Martin, Enforcement Division Chief, reported that the Board is working with the DCA to obtain an author to amend the Business and Professions Code Sections 2872.2 and 2883 (VN Statutes), and 4510.1 and 4532 (PT Statutes) relative to Interim Permits and Permissive Site Visits.

**Recommendation:**

The Board affirm its continued support for the legislative proposals regarding Interim Permits and Permissive Site Visits and direct staff to continue with the legislative process.

**M – Kenneth Merchant; and S – Todd D’Braunstein; and carried unanimously to adopt the recommendation.**

**12.D. ASSEMBLY BILL 48**

Ann Shuman, Supervising Nursing Education Consultant (SNEC), reported on the status of Assembly Bill 48.

**13.A. ANTELOPE VALLEY CAREER ACADEMY, INC. VOCATIONAL NURSING PROGRAM – INFORMATIONAL ITEM REGARDING PROVISIONAL ACCREDITATION NONCOMPLIANCE**

Ms. Shuman presented a status report regarding Antelope Valley Career Academy, Inc. VN Program’s provisional accreditation non-compliance.

Ms. Shuman stated that on February 1, 2008, the Board placed the Antelope Valley Career Academy, Inc. VN Program on provisional accreditation. The Board became aware of the program’s admission of a full-time class on April 30, 2008. This class was admitted without prior Board approval. The program was placed on the September 2009 Board Meeting Agenda for reconsideration of the program’s accreditation status.

**Representative of the School:** None present.



## **Discussion:**

Mr. Mariscal asked Ms. Shuman why the Board will be reconsidering the accreditation status of this program in September 2009 rather than May 2009. Ms. Shuman stated that it's because the Board will be presented with two, perhaps three more quarters of licensure examination data. Mr. Mariscal stated that the program has had eight successive quarters of below requirements; and they added a full-time class without Board approval. Ms. Shuman stated that the Board determines the length of time a program is on provisional accreditation and this was the period established for this program. Mr. Mariscal stated that the adding of a class without Board approval is a blatant violation and not just a continuation of non-sufficient pass rates. He further stated that unless the Board is locked into the obligation of continuing until September 2009, he would like to reconsider the accreditation status sooner. Ms. Shuman deferred to Legal Counsel for her opinion. Ms. Freedman Eidson stated that the Board can consider the provisional accreditation status sooner than September 2009; however, the Board has a requirement to put the program on notice of what it is that they have not complied with and give the program the opportunity to correct the deficiency.

**M – Martin Mariscal; and S – Angelique Stephens; and carried unanimously to place the Antelope Valley Career Academy, Inc. VN Program on the May 2009 Board Meeting Agenda for consideration of accreditation status.**

## **14. PUBLIC COMMENT PERIOD**

No public comment received.

## **15. ADJOURNMENT**

**M – Angelique Stephens; and S – Kevin Baucom; and carried unanimously to adjourn the Meeting.**

The meeting adjourned at 12:22 p.m.

Prepared by: \_\_\_\_\_ Date: \_\_\_\_\_  
**Teresa Bello-Jones, J.D., M.S.N., R.N.**  
Executive Officer

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_  
**John P. Vertido, L.V.N.**  
President